

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDWARD SMITH,

Petitioner

vs.

ANTHONY BRIGANO, Warden

Respondent

: Case Number: 1:01cv814-SJD

: District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge David S. Perelman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on April 27, 2004 Report and Recommendations (Doc. 20). Subsequently, the petitioner filed objections to such Report and Recommendations.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

IT IS ORDERED THAT petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. Sec 2254 is hereby DENIED with prejudice. The petitioner's motion for a writ of mandate and writ of mandamus for reopening direct appeal (Doc. 11) is hereby DENIED as moot.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this order would not be taken in "good faith" and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R.

App. P. 24(a); *Kincade v Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

A certificate of appealability shall not issue with respect to the dismissal on procedural default grounds of the claims asserted in the petition as grounds five, seven, eight and nine because jurists of reason would not find it debatable whether this Court is correct in its procedural ruling as required under the first prong of the two-part standard enunciated in *Slack v McDaniel*, 529 U.S. 473, 484-85 (2000), which is applicable to procedurally-barred claims. A certificate of appealability shall not issue with respect to petitioner's remaining grounds for relief because petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate whether these claims should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 323-24 (2003)(quoting *Slack v McDaniel* 529 U.S. 473, 483-84 (2000))(in turn quoting *Barefoot v Estelle*, 463 U.S. 880, 893 n. 4(1983)).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge